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FROM: James C. Morriss III

SUBJECT: Gulfco Marine

DATE: March 9, 2005

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March 9, 2005

Via facsimile 214-665-2182 and Certified Mail, Return Receipt Requested

Mr. Charles J. Sheehan
Regional Counsel, Region 6 (6RC)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Gulfco Marine Maintenance Site in Freeport, Brazoria County, Texas

Dear Mr. Sheehan:

As you know, we represent The Dow Chemical Company. This letter is submitted on behalf of The Dow Chemical Company ("Dow"), Chromalloy American Corporation ("Chromalloy"), and LDL Coastal Limited, L.P. ("LDL"). We appreciated the opportunity to meet with Mayor Greene, you and other EPA representatives to discuss the investigation and remediation of the Gulfco Marine Maintenance Site (the "Site"). We think the meeting was very productive, and Dow, Chromalloy and LDL are ready to work with EPA and the State to document the process by which the parties will undertake the cleanup of the Site. As requested by Mayor Greene at our meeting on Monday, we have taken the first step to document the VCP approach we discussed, and upon which Mayor Greene directed us to proceed. We have prepared the enclosed outline of key elements of an agreement to return the Site to the Texas Voluntary Cleanup Program ("VCP") for investigation and remediation within the framework of an EPA Administrative Order on Consent ("AOC").

The parties agree with your assessment that the approach articulated by Mayor Greene can be handled at the Region. We believe the referral of the Site to the VCP can be accomplished by an AOC. Parties to the AOC would be Region 6, the participating parties and the TCEQ. (In the alternative, TCEQ could approve the AOC by separate action.) The AOC would permit a specific exception to the Memorandum of Agreement ("MOA") between Region 6 and the TCEQ rather than an amendment to that agreement. You may have other ideas about how best to accomplish our mutual goal to use the VCP to return this Site to productive reuse, and we looking forward to discussing these ideas with you.

So that Site activities can proceed efficiently, we propose that discussions with EPA and the State regarding the scope of work for the removal action, investigation, and remedy at the Site begin immediately and proceed concurrently with the negotiations on the AOC. I will contact you next week to discuss the enclosed outline. We can then move forward with the AOC. We also hope to be ready to meet next week to begin the technical discussions regarding

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the scope of work. I presume that Gary Miller will remain EPA's point of contact for these technical discussions, and that Ms. Hardee will appoint an appropriate contact at the TCEQ.

By copy of this letter, I am forwarding a copy of the outline to Ms. Jackie Hardee and Ms. Caroline Sweeney of the TCEQ. We understand that Ms. Sweeney will be our contact for discussions regarding the legal framework.

We look forward to working with you on this matter.

Very truly yours,


James C. Morris III

Enclosure

cc: ***Via Facsimile***
Barbara Nann, US EPA Region 6
Dan Eden, TCEQ
Jackie Hardee, TCEQ
Caroline Sweeney, TCEQ
Allen B. Daniels, LDL Coastal Limited, L.P.
F. William Mahley, Strasburger & Price
Brent Murray, Sequa Corporation
Sandi VanWormer, Dow
Scott Magelssen, Dow

**OUTLINE OF KEY TERMS TO INVESTIGATE AND CLEAN UP THE GULFCO
MARINE MAINTENANCE SITE UNDER THE TCEQ VOLUNTARY CLEANUP
PROGRAM AND TO DELIST THE SITE FROM THE NPL**

MUTUAL OBJECTIVE: EPA Region 6 ("EPA"), the Texas Commission on Environmental Quality ("TCEQ") and the participating parties (The Dow Chemical Company ["Dow"], Chromalloy American Corporation ["Chromalloy"], and LDL Coastal Limited, L.P. ["LDL"]) share the goal of returning the Gulfco Marine Maintenance Site (the "Site") to productive use in a timely and cost effective manner.

To accomplish their mutual objective, the parties desire to collaborate in the investigation and clean up of the Site to ensure that response actions are protective of human health and the environment and that reuse opportunities are enhanced and promoted. Mayor Greene's willingness to use an approach employing the Texas Voluntary Cleanup Program ("VCP") for Site investigation and cleanup within the framework of an EPA Administrative Order on Consent ("AOC") advances this objective. Use of the VCP is an appropriate mechanism to implement a protective cleanup that will facilitate redevelopment by affording a buyer liability protection and will satisfy the National Contingency Plan requirements to delist the Site from the National Priorities List ("NPL"). Performance by the participating parties under the VCP will allow the work to be performed in an expedited manner, funded entirely with PRP funds and without using EPA's limited resources for oversight. EPA, TCEQ and the participating parties will enter into an AOC¹ to document the participating parties' obligations and the procedures for returning the Site to productive use through the VCP.

This outline describes the following key elements of the proposed approach and is intended to serve as the basis for developing the terms of an AOC:

- A. The Site will be retained on the NPL, but EPA agrees to refer the Site to the TCEQ for investigation and remediation under the VCP. A narrowly drawn exception to the VCP Memorandum of Agreement ("MOA") between Region 6 and TCEQ will be included in the AOC approved by EPA and TCEQ. This exception will allow the Site to be referred by Region 6 to the VCP. The AOC will contain enforceable terms which will govern the time frames for Site investigation and cleanup under the VCP.
- B. As set out in the VCP, the TCEQ will be the lead agency responsible for the review and approval of deliverables from the participating parties.
- C. EPA Region 6 will agree to hold enforcement action on the Site in abeyance as long as the parties are in compliance with the terms of the AOC and the VCP.
- D. EPA agrees to accept the VCP as an appropriate mechanism for investigating, defining and implementing the appropriate response actions required for the Site.

¹ The parties can discuss whether the TCEQ can ratify the AOC entered into with EPA, or whether a separate order with the TCEQ will be necessary.

- E. The AOC will contain enforceable time deadlines for completing the investigation and cleanup under the VCP. Assuming 30-day review/approval periods and no force majeure events or other site or regulatory delays:
1. Surface Removal— remove the storage tanks and their contents, remove miscellaneous trash and debris including waste materials in the tank containment area – within 120 days from the effective date of the AOC.
 2. Assuming acceptance into the VCP and one field mobilization, complete the Draft Affected Property Assessment Report (“APAR”) 180 days from the effective date of the AOC.
 3. Submit a Draft Response Action Plan (RAP) describing necessary response actions within 60 days of approval of the APAR by TCEQ.
 4. Complete any required remediation within the time frame established in the approved RAP.
 5. Compliance with any and all conditions associated with the remediation of the Site (such as institutional controls) contained in any Certificate of Completion for the Site.
 6. Payment of the Site-related VCP invoices, when due.
- F. All required response actions shall be completed in accordance with the clean-up standards required for commercial/industrial land use under the Texas Risk Reduction Program (30 TAC Chapter 350).
- G. While the Site is in the VCP and continuing after the Certificate of Completion for the Site is issued, EPA agrees to treat the Site, the participating parties, and all subsequent purchasers who are not responsible persons as of the effective date of the AOC, in accordance with the VCP and the MOA.
- H. If the participating parties fail to comply with the AOC or the VCP requirements, the TCEQ may remove the Site from the VCP, and EPA may pursue enforcement against the Site and the participating parties.
- I. After implementation of all appropriate response actions required under the VCP, TCEQ shall refer the Site back to EPA for review, and EPA shall delist the Site or a portion of the Site after confirming that the delisting criteria have been satisfied through the performance of the agreed work plan. The response actions completed under the VCP will be the basis for EPA’s review to confirm that the Site qualifies for delisting.

- J. The parties and TCEQ shall provide for public participation in the form of public meetings, poster sessions, or fact sheets and/or notices. At EPA's discretion, the participating parties shall establish a community information repository at or near the Site to house documents prepared pursuant to the AOC for public review.²
- K. Access to the Site and appropriate force majeure provisions will be negotiated.
- L. Appropriate releases, covenants not to sue, contribution protection and reservation of rights will be negotiated.
- M. Dow and Chromalloy shall provide financial assurance in the form of the financial test or other appropriate mechanism to demonstrate their ability to perform their obligations under the AOC and VCP.

² The parties can discuss whether publication in the Federal and Texas Registers is warranted.